

JUDGE DAVID GUADERRAMA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED

2016 AUG -1 PM 5:00

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY EC
DEPUTY

Steven M. Fitten
300 Vista del Rey Drive
El Paso, TX 79912

Case No.

Plaintiff Pro Se,

EP16CV0310

V.

Webster University
Building 632 Taylor Street
Fort Bliss, TX 79906

and

Elizabeth J. Strobel
individually and in her official capacity as
President, Webster University
Loretto Hall 370
470 East Lockwood Avenue
St Louis, MO 63119

and

Julian Schuster
individually and in his official capacity as
Provost & Senior Vice President
Webster University
Loretto Hall 276
470 East Lockwood Avenue
St Louis, MO 63119

and

Richard Foristel
individually and in his official capacity as
Director, Shanghai China Campus
Webster University
470 East Lockwood Avenue
St Louis, MO 63119
and

Betsy Schmutz
Individually and in her official capacity as
Associate Vice President & Chief Human Resources Officer
Loretto Hall 32
Webster University
470 East Lockwood Avenue
St Louis, MO 63119

and

Maureen Absolon Weil
individually and in her official capacity as
Coordinator, International Programs
East Academic Building 326,
470 East Lockwood Avenue
St Louis, MO 63119

Defendants

**Complaint for Employment
Discrimination and Jury Demand**

JURISDICTION AND VENUE

1. This action is brought by Steven M. Fitten, Plaintiff *Pro Se*, to redress employment discrimination and retaliation pursuant to Title VII of the Civil Rights Act of 1964 (42 USC §§ 2000e *et seq.*), on the basis of race and color (African, Hispanic and Native American ancestry with brown complexion) and reprisal for filing charges and opposing unlawful employment practices; because of age (64 – DOB) under the Age Discrimination in Employment Act (ADEA), 29 USC §§ 621; 42 USC § 1981a for race, color and reprisal discrimination; and 42 USC § 1985 for the defendants conspiring and acting in concert to deprive and interfere with Plaintiff's civil, property rights and privileges pertaining to his

employment with defendants because of his support, advocacy and filing complaints regarding unlawful employment practices under Title VII, the ADEA, and 42 USC § 1981a, as an American citizen.

2. Jurisdiction is proper also pursuant to 42 USC § 2000e-5(f); 28 USC § 1331; 28 USC § 1332 (a) being a controversy greater than \$75,000.00; and 42 USC § 1343.
3. Defendant Webster University (Webster) is a private, non-profit educational institution with more than 17,000 students studying at on-line for degree programs and at campus locations in North America, Europe, Asia and Africa. At all time relevant hereto, Webster has maintained a campus at Fort Bliss, TX and employed Plaintiff as an Adjunct Professor and faculty member since 2011, teaching Government Contracting and Management courses. Webster's central campus is located in St Louis, MO.
4. At all times of the discrimination complained of, Webster employed in excess of 200 employees full-time.

STATEMENT OF CLAIM

5. On 21 July 2014, Plaintiff applied for a 9-week term teaching position for a Joint MBA Program located at the Webster Shanghai, China Campus that began 3 January 2015 and ended 7 March February 2015. On or about 18 August 2015, Plaintiff agreed to accept said teaching position contract offered by Webster Shanghai Campus employee, Ms Serene Qiu, an Asian female. The terms of the teaching position were: roundtrip airfare; compensation of \$7,400.00 for teaching two (2) course sections; *per diem*; room and board included; plus other compensated teaching opportunities at Webster partner Shanghai University Far East (SUFE), lectures to top 500 companies doing business in China, and open classes.
6. As requested by Ms Qiu, Plaintiff furnished his diploma, course syllabus, passport with picture (expired), and spouse's passport as well on 11 September 2015. Webster agreed to furnish visas for Plaintiff and his spouse. Plaintiff was responsible for purchasing airline tickets for his wife.

7. After receiving the passports, Ms Qiu advised Plaintiff the defendant Webster International Programs Coordinator, Maureen Absolon (Weil), a white female, would make all the remaining arrangements, which included visa and air travel.
8. Prior to 27 October 2014, Plaintiff experienced no difficulty with Ms Qiu and was on track to arrive the week of Christmas. Following receipt of Plaintiff's new passport and pictures for which he had to pay an additional expedited fee of \$200.00, replies to Plaintiff's E-mail messages by Ms Absolon were delayed, disrespectful and tersely written, while avoiding Plaintiff's name and title as an Adjunct Professor. Travel arrangements were referred by Ms Absolon to Ms Joannie Genne of TravelPlex Travel & Cruise, Webster's Travel Agency. An E-mail message of 31 October 2014 from Ms Absolon directed Plaintiff to pay Ms Genne by credit card and her travel agency would issue both tickets for himself and spouse. Plaintiff was never advised that his wife's tickets could be procured from another travel agency or directly from the airline.
9. On 5 November 2014, Ms Gennie sent plaintiff a message confirming, "prices round trip \$1090.30 pp Maureen okd Let me know," The morning of 6 November 2014, Plaintiff had Gennie confirmed the total purchase price of \$1,090.30 and provided his credit card information. Later that day, Plaintiff received an E-mail from Ms Gennie confirming the purchase, but at a different price of \$1,128.30. An extra \$38.00 was tacked on as an agency fee, which had not been disclosed or authorized by Plaintiff. In response to the unauthorized \$38.00 charge, Plaintiff called Ms Genne; she acknowledged the charge was not disclosed and unauthorized, voided the ticket and reversed the charge.
10. On 6 November 2014, on 6 November 2014, Plaintiff sent Ms Absolon a message regarding the non-disclosed service and unauthorized additional charge, along with lessons learned to prevent future occurrences for faculty traveling under similar circumstances. Plaintiff's concern was the non-disclosure and charging methods used by TravelPlex were actually unethical, deceptive, and illegal. Plaintiff further suggested the university might want to consider using another travel agency and avoid steering travelers to TravelPlex exclusively. After Absolon sided with TravelPlex, while denying responsibility to make travel

arrangement disclosures to Webster personnel, Plaintiff indicated that he would have to make a report all that had transpired.

11. Absolon then immediately contacted the Directors of Webster China, Professor Richard Foristel (white male), and International Programs, Grant Chapman (white male), Ms Qiu, and SUFE in retaliation to Plaintiff's complaint and to cancel his teaching assignment. In turn, Plaintiff received a message from Professor Foristel very early on the morning of 8 November 2014, strongly recommending that he might not come to Shanghai citing recent tension and harassment by Shanghai police over visas and passports; plus the availability of many professors who wanted to teach there. In response, Plaintiff indicated that he had already purchased another airline ticket for his wife on 7 November 2014 for less at \$1,040.30; questioned why Webster faculty had not been returned stateside, and revealed Foristel's replacement strategy that was afoot.
12. The following morning, 8 November 2014, Professor Foristel cancelled the teaching assignment position, even though he had selected another individual not in Plaintiff's protected group. Plaintiff extended another opportunity for redeeming the situation to Foristel, indicating ethics and EEO complaints would be filed on 10 November 2014, and that Title VII litigation would ensue for breaching the teaching assignment, based upon retaliation, age and race, which were plainly revealed and readily available thru Plaintiff's resume, passport pictures, passport, and Webster University faculty bio (photograph included) In a coup d' gras that can only be described, Foristel refused to take corrective action, falsely contending SUFE would not sponsor a visa.
13. On 10 November 2014, Plaintiff filed an ethics and EEO complaint with Defendants President Elizabeth Strobel and Provost Julian Schuster; which in turn were referred to Ms. Betsy Schmutz for investigation. However an investigation never occurred. Defendants Strobel, Schuster and Schmutz agreed and intentionally conspired to prevent an EEO and Ethics investigation in order to obviate Webster's liability for the misconduct of Foristel and Absolon, and retaliate against Plaintiff for reporting ethics violations and making employment discrimination complaints based on race, color, age, and reprisal.

14. After Defendants refused to act, Plaintiff filed a charge with the EEOC describing discrimination actions described in paragraphs 1-13 herein above on 20 November 2014. A Notice of Right to Sue was issued on 29 April 2016, sent by first class U.S. Mail and received by Plaintiff on Monday, 2 May 2016. The Discrimination Charge and Right to Sue letter are attached hereto.
15. Since Plaintiff filed his discrimination charge with EEOC and EEO complaint with Webster, he has been denied any teaching assignments at the Webster Fort Bliss Campus and on-line courses. Consequently, Plaintiff has earned no income from Webster since 8 November 2014 as a direct result of having filed employment discrimination charges, opposing unlawful employment practices, and because his race, color, age and reprisal.

COUNT I

16. Plaintiff re-alleges and incorporates by reference all of the preceding 15 paragraphs as if fully rewritten and alleged herein.
17. All of the acts of employment discrimination complained of herein were based on race, color, and reprisal constitute violations under Title VII of the 1964 Civil Rights Act, 42 USC § 2000e *et seq.* and 2000e-3a.

COUNT II

18. Plaintiff re-alleges and incorporates by reference all of the preceding 17 paragraphs as if fully re-written and alleged herein were also based upon Plaintiff's age as Defendant's have sought to replace him with employees younger than his present age of 64, and constitutes a violation of the ADEA, 29 USC §§ 621.

COUNT III

19. Plaintiff re-alleges and incorporates by reference all of the preceding 18 paragraphs as if fully re-written and alleged herein. The acts of employment discrimination were intentionally committed and also based upon Plaintiff's race, color, and reprisal in violation of 42 USC § 1981a.

COUNT IV

20. Plaintiff re-alleges and incorporates by reference all of the preceding 19 paragraphs as if fully re-written and alleged herein. The acts of employment discrimination and reprisal were committed as a result of an agreement and concerted action with the assent and cooperation of all of the Defendants named herein to interfere and deprive Plaintiff of his privileges and civil rights as an American citizen because of his race in violation of 42 USC § 1985 (3)

CLAIM FOR RELIEF

21. WHEREFORE, Plaintiff prays that Defendants be enjoined from committing further acts of discrimination complained of herein, including back pay and compensatory damages; plus punitive damages in the amount of \$200,000.00; and any additional declaratory and injunctive relief deemed necessary and proper by this honorable Court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted,



Steven M. Fitten
Pro Se
300 Vista del Rey Drive
El Paso, TX 79912
(937) 732-4021

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Steven M. Fitten**
300 Vista Del Rey Dr
El Paso, TX 79912

From: **El Paso Area Office**
300 E. Main Drive, Suite 500
El Paso, TX 79901



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

453-2015-00169

Raul Ballesteros, Jr.,
Investigator

(915) 534-4526

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

APR 29 2016

Enclosures(s)

Lucy V. Orta,
Area Office Director


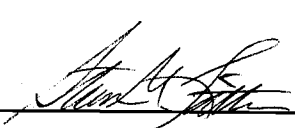
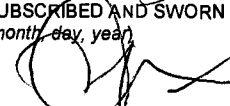
(Date Mailed)

cc: **Human Resources**
WEBSTER UNIVERSITY
470 East Lockwood
Saint Louis, MO 63119

Bradley M. Bakker
ARMSTORNG TEASDALE, LLP
7700FORSYTH BLVD, SUITE 1800
Saint Louis, MO 63105

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC </div> <div style="text-align: right;"> 453-2015-00169 </div> </div>	
_____ State or local Agency, if any		and EEOC	
Name (indicate Mr., Ms., Mrs.) Dr. Steven M. Fitten		Home Phone (Incl. Area Code) (937) 732-4021	Date of Birth 10-09-1951
Street Address 300 Vista Del Rey Dr, El Paso, TX 79912		City, State and ZIP Code <div style="text-align: center;"> RCVD EEOC ELPA NOV20 14 PM 3 05 </div>	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name WEBSTER UNIVERSITY		No. Employees, Members 500 or More	Phone No. (Include Area Code) (800) 981-9801
Street Address 470 East Lockwood, Saint Louis, MO 63119		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) <div style="display: flex; flex-wrap: wrap;"> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> RACE</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> COLOR</div> <div style="margin-right: 10px;"><input type="checkbox"/> SEX</div> <div style="margin-right: 10px;"><input type="checkbox"/> RELIGION</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> NATIONAL ORIGIN</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> RETALIATION</div> <div style="margin-right: 10px;"><input checked="" type="checkbox"/> AGE</div> <div style="margin-right: 10px;"><input type="checkbox"/> DISABILITY</div> <div style="margin-right: 10px;"><input type="checkbox"/> GENETIC INFORMATION</div> <div><input type="checkbox"/> OTHER (Specify)</div> </div>		DATE(S) DISCRIMINATION TOOK PLACE <div style="display: flex; justify-content: space-between;"> <div> Earliest 07-01-2014 </div> <div> Latest 10-27-2014 </div> </div> <div style="text-align: right; margin-top: 10px;"> <input checked="" type="checkbox"/> CONTINUING ACTION </div>	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): PERSONAL HARM: I. On or around July 2014 I applied for an oversea teaching position for the Respondent. On or about August 14, 2014 the Respondent provided me with a contract and made me believe I was hired. On or about October 28, 2014 I was told to submit my passport (stating my age, race, color including a picture of me) which I did. On or about November 08, 2014 I received an email from Dr. Richard Foristel (White), Director, stating that I should reconsider in working overseas because of the political tensions in Shanghai. Dr. Foristel then continued to state that the position was cancelled but that he had selected another individual (not in my protected group). RESPONDENT'S REASONS FOR ADVERSE ACTION: II. No legitimate reasons given were given. DISCRIMINATION STAMENT: III. I believe I have been discriminated and retaliated against because of my race and color, Black, national origin, Hispanic, in violation of Title VII of the Civil Rights Act of 1964, as amended. I believe I have been discriminated against because of my age, 63 years, in violation of the Age Discrimination in Employment Act of 1967, as amended.			

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.	NOTARY - When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT  SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) Nov. 20, 2014
<div style="display: flex; justify-content: space-between;"> <div> Nov 20, 2014 Date </div> <div>  Charging Party Signature </div> </div>	<div style="text-align: right;">  </div>